

Remarks

Applicants have carefully reviewed the Office Action mailed on January 26, 2004. Applicants respectfully traverse all objections, rejections, and assertions made by the Examiner. With this amendment, claim 6 is amended. Claims 1-29 remain pending.

Claims 1-5 and 7-9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Forde et al. in U.S. Patent Publication No. 2002/0055767. The Examiner asserted that Forde discloses a plurality of struts and a plurality of slot and that the only difference from Applicants' claimed filter assembly was merely the ordering of the struts and slots. We disagree. Claim 1 recites the limitation of "a distal protection filter having a plurality of struts". This limitation states that the struts are a part of the filter itself. The filter shown by Forde seems to include a plurality of struts.

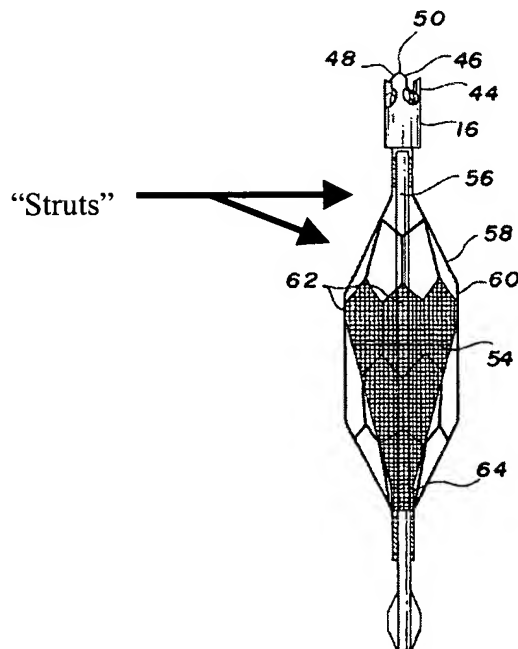


FIG. 2

These "struts" appear to be part of the filter assembly in the manner typically seen in the art.

Applicants' claimed filter assembly has additional structural features. For example, claim 1 recites that "the plurality of struts are coupled to and retained within the plurality of

slots of the holding receptacle". This feature allows a user to attach and/or detach the filter by disposing the filter struts within the slots of the holding receptacle. Thus, it is a portion of the filter itself that is attached to the holding receptacle. Clearly, no part of the Forde filter has this structural arrangement. Instead, the Forde "struts" are attached to a female lock receiving section 16. It is the female lock receiving section 16 that has a number of "slots" that can be attached to the corresponding male lock receiving section 14 (which is shown in Figure 1 of Forde).

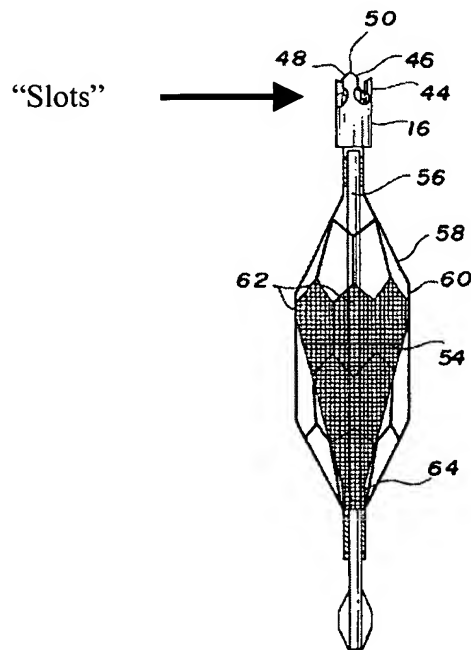


FIG. 2

Thus, the Forde "struts" are not coupled to and retained within the plurality of slots of the holding receptacle. Because Forde fails to disclose at least one structural limitation recited in claim 1, a prima facie case of obviousness has not been established. Accordingly, claim 1 is believed to be allowable over Forde. Because claims 2-5 and 7-9 depend from claim 1, they are also believed to be allowable for at least this same reason.

The Examiner went on to indicate that the only difference between Applicants claimed invention and the Forde device is that the ordering of the struts and the slots is reversed in Forde. This argument, however, is clearly not applicable. In order for Forde to disclose the

claimed assembly with a reversed ordering of elements, the Forde “struts” themselves would need to include “slots” that could couple to and retain a portion of the holding receptacle. Not only is this structure not shown by Forde, it is difficult to envision altogether.

The MPEP section upon which the Examiner is relying, namely §2144.04 VI(C), states that “The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness”. Thus, some motivation or teaching must be found in the reference in order to alter the arrangement of parts. Forde appears to be silent on this point. The only discussion that look at all relevant is found in paragraph 27. In this paragraph, Forde discusses how the filter can be connected to a contractible frame 58. This contractible frame, however, has no apparent relationship to the locking members or to the “slots”. Accordingly, Applicants respectfully submit that even if Forde parts could be rearranged in the manner suggested by the Examiner, there is absolutely no motivation or suggestion to do so. Therefore, the rejection of claims 1-5 and 7-9 is deemed improper and Applicants hereby request that it be withdrawn.

Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

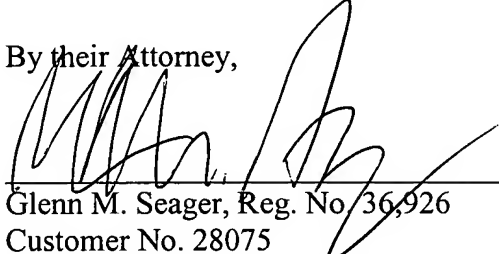
Reexamination and reconsideration are requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is also respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By their Attorney,

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